

# VILLAGE OF ALDEN

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September 11, 2014

The Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Village of Alden/Time Warner Cable  
Our File No. 2555-2

Gentlemen:

The Village of Alden offers the following in response to the merger request recently filed by Comcast and Time Warner Cable. The Village recently received correspondence from Comcast indicating that we were not dealing with a merger and thus, contrary to the specific language within the franchise agreement which requires the consent of the Village, Comcast was not going to seek same nor were they intending to file a 394 Form with the Village. Our initial question is quite simple, are we really dealing with a merger or not? Prior notices from Time Warner to their customers indicated that it was a merger, something which Comcast now denies.

You should also be aware that the franchise agreement with the Village of Alden expired on September 15, 2010. Not only has no new franchise been negotiated, but the process has been arduous due primarily to the inactivity on the part of Time Warner. We fully understand that the FCC considers there to be sufficient competition by virtue of the existence of the Dish Network or Direct TV, but as a practical matter, real competition does not exist since no cable corporation is going to overbuild where another cable company exists. It is only in instances where you can obtain satellite television and Verizon has placed its FIOS cables that some competition exists. Unfortunately, since Alden is a rural community twenty (20) miles east of Buffalo, Verizon FIOS is not coming to our area any time soon. Therefore, the Village has been relegated to receiving cable television services through the Rochester office of Time Warner, as opposed to the Buffalo regional office even though Alden is seventy (70) miles from Rochester and only (20) miles from Buffalo. The Village has been advised by Time Warner that if the Village wants to pay Time Warner approximately One Hundred Twenty-Five

Thousand Dollars (\$125,000) if several other municipalities make the same request, Time Warner will transfer the franchise over to Buffalo. Obviously, that is not something which a small village can undertake.

Furthermore, there is a distinct and equal bargaining power between a small municipality and a giant corporation such as Time Warner, or now Comcast. Under the rules, they can simply operate under the old franchise agreement and do nothing while they regularly increase rates, something over which the local municipality has no control. Since the local municipality has no control over pricing, channel selection, or apparently anything else other than the receipt of a franchise fee, and such an equity has been considered in the best interest of the public by the State and Federal governments, it is somewhat perplexing as to how a small municipality can protect its citizens to ensure coverage throughout the municipality and the existence of a regional programming selection which makes more logical sense based upon the location of the municipality. As it stands now, the Village of Alden has no power and the large corporations have no incentive in which to deal with them. While it is easy to say that individuals can simply not accept cable television, when you live in a rural area such as Alden, your options are much more limited.

To understand the frustration of the Village, a brief historical review is necessary. On November 26, 2007, a letter was sent to Time Warner Cable which detailed the Village's entry into the franchise with Time Warner and how the rest of Erie County became a Time Warner franchise. At that time, Time Warner was asked why Alden which is located in Erie County, could not be with the rest of Erie County instead of Rochester and Monroe County. When no response was received, a follow-up letter was sent on January 8, 2008. Thereafter, by way of a telephone call, the Time Warner attorney stated that there were no plans to change any engineering to allow Alden to be part of the Buffalo system. That was confirmed in a letter of January 28, 2008. The next contact was an electronic message from Time Warner Cable in response to the Village's January 8, 2008 letter nearly six (6) months later that simply acknowledged that the Rochester division had made contact with the Village by way of telephone.

On October 24, 2008, a letter to Time Warner Cable was sent by the Village questioning the Cable company's service in light of the disagreement between Time Warner and LIN TV and, more specifically, questioning why Bill's games have been carried in Niagara County and Genesee County, but not Erie County. The letter also questioned why Time Warner Cable prevented Alden residents from receiving the CBS feed out of Rochester even though we were allegedly part of the Rochester area when it claimed that it could not provide Buffalo programming yet some residents were able to pick up the Rochester CBS feed the first day. It appeared that many Village residents were able to receive the Rochester affiliate of CBS the first day the Buffalo affiliate was off the air but such reception was then switched off the next day. By way of a June 16, 2009 electronic message from Time Warner Cable with regard to setting up a meeting, Time Warner indicated that the cost of converting from Rochester to Buffalo was

significant, primarily in plant and engineering costs.

One week later on June 23, 2009, an electronic message was sent to Time Warner Cable indicating that the Village would have issues to discuss if there was to be a renewal and that the Village would be interested in hearing what Time Warner would propose. It was also pointed out that as a practical matter, one would think that Time Warner Cable's advertisers would want to know that a portion of their audience is not interested in travelling to Rochester for business and that Time Warner would benefit from increased advertising revenues with a more focused market.

Thereafter, a meeting apparently took place with the Town of Alden rather than the Village and correspondence was forwarded by the Town attorney which indicated that the ten (10) municipalities on the same Time Warner Cable programming hub were the Villages of Akron and Alden, and the Towns of Alden, Bennington, Darien, Java, Marilla, Newstead, Orangeville, and Sheldon. Only the two (2) Villages and the Towns of Alden, Marilla, and Newstead are located in Erie County. At that time, the municipalities were advised that if all ten (10) municipalities agreed to the transfer, it would cost each one approximately One Hundred Twenty-Five Thousand Dollars (\$125,000). If not all ten (10) switch, the cost would increase greatly. The estimated cost for only the Towns of Alden, Marilla, and Newstead, and the Village of Alden to switch from Rochester to Buffalo would be approximately Five Hundred Seventy-Seven Thousand Dollars (\$577,000) allegedly because of the additional need to restring fiber optic cable lines, to install new equipment, as well as to engineer partial reprogramming of the hub. Obviously, that is not a cost that any of the municipalities could undertake.

On September 14, 2010, Time Warner Cable was reminded by the Village that the franchise agreement expired effective September 15, 2010. Time Warner was asked with regard to their availability for discussions regarding renewal. No response was received to that letter. On April 23, 2012, a letter was sent to Time Warner from the Village indicating that the Village had not heard back from Time Warner even though it was aware that Time Warner had negotiated a new agreement with the Town of Alden. On November 21, 2012, Time Warner again received a letter from the Village indicating that the Village had undertaken a review of the franchise and conducted a public hearing seeking comments from local residences. At that time, the Village enclosed a copy of revisions made to the franchise agreement. On March 3, 2013, the Village sent another letter to Time Warner Cable indicating that they had not heard from them in response to the revised franchise agreement. Approximately one (1) month later, the Village received an email from Time Warner Cable containing Time Warner's revised franchise renewal agreement with the Village. On July 5, 2013, in a letter to Time Warner Cable, the Village indicated that it had reviewed Time Warner's Revisions to the franchise agreements and that further discussions were necessary. On September 9, 2013, another letter was sent to Time Warner Cable indicating that the Village had not yet heard from them regarding a franchise agreement. On November 27, 2013, another letter was sent to Time Warner asking if Time Warner had an opportunity to complete the review of the proposed franchise agreement prepared



by the Village more than six (6) months earlier. That letter indicated that it had been a fairly long time since the franchise had expired and that the Village was interested in finalizing the matter. On January 20, 2014, a letter was sent to Time Warner Cable asking about the status of review of the franchise agreement. Two (2) months later on March 13, 2014, another letter was sent to Time Warner indicating that the Village had received notification of rate increases, but had not yet received a response to the franchise proposal. On May 22, 2014, another letter was sent to Time Warner indicating that the Village had not heard from them with regard to the franchise agreement and also inquiring as to why the Village had not received Form 394 regarding the acquisition of Time Warner by Comcast. It was not until July of this year that Time Warner contacted the Village with regard to setting up a meeting, yet that has still not yet taken place.

As can be seen from the above timeline, Time Warner had no great interest in resolving these matters with the Village and was attempting to negotiate new franchise agreements everywhere around the Village for the sole purpose of later saying that they could not make a change because they already had franchise agreements in place with the surrounding municipalities to remain in the Rochester fold. It is respectfully submitted that they deliberately ignored the Village since they had no incentive to try to reach an agreement. Whether it was because they realized that the Village of Alden would not simply lie over and sign anything that Time Warner presented to them or for some other reason is unknown, but it is clear that there is an unequal bargaining power between the municipality and the corporate giant and that disparity has been enhanced by FCC rulings and action.

Now the State asks the municipalities to comment with regard to the merger. Our comments are simply that creating a larger corporation with even less competition will not prove beneficial to municipalities or the residents which they serve. While arguments can be raised with regard to economies of scale and to enhance programming, what is clear is that municipalities are unable to tax cable corporations for use of their rights-of-way and the only revenue that is received is from a franchise fee which is also limited. Furthermore, any time Time Warner makes any payments to improve governmental or educational programming on a local level, they want the costs to come, not from Time Warner, but rather, from the franchise fee. That is precisely what occurred the last time Time Warner negotiated with the Village and the issue of providing equipment to the local school district arose. Instead of being a good corporate citizen, Time Warner took the more profit building approach and demanded that those costs be borne by the Village residents. At the same time, Time Warner has regularly increased its rates and limited its programming by tiers.

Now a merger is being contemplated which will only make a large corporation even larger and further dilute what meager authority existed with the local municipalities. If they feel that they do not even have to respond to municipalities now, what are they going to be like down the road?

If you have any questions, or if you would like to discuss this matter further, please do

The Federal Communications Commission  
September 11, 2014  
Page 5

not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris G. Trapp", written over a circular stamp or seal.

Chris G. Trapp  
Village Attorney

CGT/dda

cc: Hon. Michael Manicki, Mayor  
Hon. Angelo Daluisio, Trustee  
Hon. Ted Mezydlo, Trustee  
Hon. Michael Retzlaff, Trustee  
Hon. Dan Warmus, Trustee  
Keith Sitzman, Superintendent of Public Works  
Joe Czechowski, Code Enforcement Officer  
Sue Galbraith, Deputy Clerk  
Terry Wachowiak, Village Clerk